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the flow by Colorado, the equitable apportionment of benefits between the two states was being destroyed.

A rather surprising contention on the part of Colorado was that there were two Arkansas rivers, one ending in Colorado near the state line, and the other springing up farther on in Kansas; thus, leaving Kansas with no rights whatever in the so-called Colorado-Arkansas. The court, however, held that the river was continuous, although parts of the bed were at times entirely dry.

The rule, laid down by the court, seems to be an equitable compromise between the common law rule governing the rights of riparian owners and the doctrine of the prior appropriation of waters.

The law announced then is, that where a river flows through two states, each state has a right to appropriate the waters for its needful purposes, even though it causes injury to the other, so long as the amount of the appropriation by either does not destroy the balance of equality existing between them.

R. M. S.

EQUITABLE JURISDICTION TO CANCEL FRAUDULENT PUBLIC RECORDS.—The inherent power of a Court of Equity to meet new conditions and adjust its procedure and remedies to new situations is well illustrated by the decision of JUDGE DILL in *Vanderbilt v. Mitchell et. al.*, in the New Jersey Court of Errors and Appeals, June 17, 1907, 67 Atl. Rep. 97. The statutes of New Jersey require the filing of certificates of birth, and make it the duty of the attending physician to transmit to the Superintendent of the Bureau of Vital Statistics a certificate setting forth the date and place of birth, name of each parent, maiden name of the mother, name of the child, and name of the attending physician. The law also provides that a copy, under the hand of the superintendent, "Shall be received in evidence in any court of said state to prove the facts therein contained." There is no provision in the statutes for the correction, modification or annulment of the record, in case of fraud or mistake.

The plaintiff, John Vanderbilt, filed a bill against Myra Vanderbilt, his wife; William Vanderbilt, infant son of the wife, and Henry Mitchell, superintendent of the Bureau of Vital Statistics of New Jersey, alleging that he and his wife had lived together for only two months after marriage; that for nearly two years after the separation his wife had lived with a third party named, in adultery; that the child was the result of the adulterous intercourse; that upon the birth of the child the wife falsely stated to the attending physician that the plaintiff was the father of the child, that it was lawfully born, and that the physician, believing these statements to be true, inserted them in the birth certificate to the Bureau of Vital Statistics, where it was duly filed and recorded; that the purpose of such certificate was to assert and maintain for said child all the rights of a legitimate son. The bill further stated that the mother of the plaintiff had created a testamentary trust, from which the plaintiff received an income during his life, and had a vested remainder in himself and his lawful heirs, to take effect after the death of

certain nephews and nieces. It was further alleged that the plaintiff was sick with a fatal illness, and that the purpose of the defendant wife and child was to use this record after plaintiff's death to assert claims of the child to this property as the lawful heir of the plaintiff.

The relief sought was the cancellation of this certificate, a decree of nullity as to this status of parentage apparently created by this fraudulent record, and a permanent injunction against both mother and child from claiming for the child the status named, and the property or privilege of a lawfully-begotten child of the plaintiff.

The court below sustained a demurrer on the ground that the case did not come within any recognized head of equity jurisprudence, and that no property right was involved, and courts of equity could not take cognizance of personal rights or personal wrongs not affecting property.

The Court of Errors and Appeals, in reversing this decision, was unable to find a case precisely in point. In *Callender v. Callender*, 53 How. Pr. 364, a defendant was enjoined from using, in a divorce case, a confession procured from the wife by fraud. See, also, *Meldrum v. Meldrum*, 15 Colo. 478, 11 L. R. A. 65, 70. So, too, in *Randazzo v. Roppolo* (1906), 105 N. Y. Supp. 481, it was ruled that a court of equity had the power to amend a marriage certificate filed with the Bureau of Vital Statistics, in a case where a woman went through the marriage ceremony with a man who falsely impersonated the plaintiff. These were the cases most nearly in point.

Other authorities, more or less analogous, were mentioned, where the determinations or certificates of public officers have been annulled or set aside; as in *Garland v. Wynn*, 20 Howard 6, setting aside a decision of the land register and receiver, confirmed by the commissioner, obtained by false swearing in a case of contested claim of right of entry; *Lytle v. State of Arkansas*, 22 Howard 193, setting aside an adjudication of a register authorizing an entry shown to have been obtained by fraud; directing the cancellation of the record where it is shown to be fraudulent, as in *Fenton v. Way*, 44 Ia. 438; and this may be done where the officer is not charged with any fraud, as in *McClurg v. Terry*, 21 N. J. Eq. 225, enjoining a justice of the peace from certifying a pretended marriage for record. Also, the cases in which courts of equity have been held to have inherent jurisdiction to annul the status of marriage on the ground of fraud, as *Carris v. Carris*, 24 N. J. Eq. 516, *Rooney v. Rooney*, 54 N. J. Eq. 231, and *Crane v. Crane*, 66 N. J. Eq. 21, although it was admitted that the English case of *Moon v. Moon* [1897], L. R. Prob. 263, is to the contrary.

Upon a review of these cases the court came to the conclusion that if nothing more than the status and personal rights of the plaintiff were thus threatened it would hold "and without hesitation, that an individual has rights other than property rights which he can enforce in a court of equity, and which a court of equity will enforce against invasion," even though no particular property right was involved, and no statute conferred jurisdiction. The court also indicated that it would follow such cases as *Pavesick v. New England Life Ins. Co.*, 122 Ga. 190, *Itzkovitch v. Whittaker*, 115 La. 479 (not referred to), and the dissenting opinion of GRAY, J., in *Roberson v.*

Rochester Folding Box Co., 171 N. Y. 538, rather than the opinion of the majority in that case, these cases being those relating to the "so called right of privacy."

The court, however, was of the opinion that property rights of a very important kind were involved in the case, and pointed out that there is a well-recognized rule to the effect that a man has a property right in his own name, to such an extent that its use as an advertisement or for some other purpose without his consent, may be restrained, as in *Routh v. Webster*, 10 Beav. 561; *Walter v. Ashton*, L. R. Ch. Div. 1902, Vol. 2, 282. And, further, that the plaintiff has a right not to be subjected to the risk of liability for the support and maintenance of the infant, or his property charged therewith; and that these were such property rights as were fairly within the protection of a court of equity. And still further, since in New York if a person dies without issue he may dispose by will of *all* of his property absolutely, to *any person* that he may choose, but if he leaves wife or child, he can dispose of only one-half of it to any charitable institution,—this unlimited right of disposition, in case the plaintiff left no wife or child, is clearly a property right which a court of equity ought to protect,—*O'Neill v. Supreme Council Amer. L. of H.*, 70 N. J. L. 411.

The court states the following very sensible rule: "The jurisdiction of the Court of Chancery in cases of fraud is as broad and far-reaching as the forms, the devices and the ramifications of fraud can extend, and no public record will be allowed to stand as evidential in the face of facts, showing in a direct proceeding in a court of equity that the certificate is false, conceived in fraud, and with deliberate intent to use it in the future, to wrongfully establish the paternity of a child, create a liability for maintenance and support, and rob the lawful heirs of a decedent of their inheritance."

The principles above announced accord well with the statement of BAKER, Circuit Judge, in *United States v. Milwaukee Refrigerator Co.* (1906), 145 Fed. R. 1007, on 1010, who says: "To afford protection where other means are inadequate has been accounted the chief merit of equity. That the infraction of a complainant's rights may also constitute a crime is no reason for denying relief. Cases of refusal where no property was involved came largely, we believe, from the consideration that equity will not enter unenforceable decrees, and not from regard for the intending doer of the criminal act. If a complainant's rights, whether the higher and more sacred rights of person (*Warfield's Case*, 40 Tex. Cr. Rep. 413, 50 S. W. Rep. 933, 76 Am. St. R. 724, *Itzkovitch v. Whitaker*, 115 La. 479, 39 So. 499, 112 Am. St. R. 272), or the lower and more sordid rights of property, cannot be protected elsewhere; and if a decree and writ that will be enforceable can be framed, no court of equity should acknowledge itself wanting in the primary power of devising decrees and writs to meet the needs of the situation." See also *Chappell v. Stewart*, 82 Md. 323, 51 Am. St. R. 476, 37 L. R. A. 783, with note here classifying cases where courts of equity have interfered to protect personal rights not involving property.

H. L. W.